

REMARKS/ARGUMENTS

In the Office Action mailed on October 1, 2007, the Examiner objected to Claims 24-27 and 40-44 of this application under 35 U.S.C. 103(a) as unpatentable over Smithyman (USPN 6,047,497) in view of Yates (US5904909), and further in view of McCurrie (US1849194).

Applicant appreciates the time and consideration provided by the Examiner in reviewing this application, however, respectfully traverses the rejections of Claims at least for the following reasons.

Rejection under 35 U.S.C. 103(a)

According to MPEP 706.02(j):

“To establish a prima facie case of obviousness...the prior art reference (or references when combined) must teach or suggest all claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on the applicant’s disclosure.”

The Examiner considered the independent Claim 24 to be unpatentable over the features of the apparatus and method shown in US 6047497 (*Smithyman*) when viewed in combination with US 5904909 (*Yates*).

The present application is directed to an apparatus which comprises a mobile fumigation means operatively coupled to the shipping container adapted for a fumigation chamber. The mobile fumigation means includes a fumigant inlet means to allow a flow of a fumigant into the fumigation chamber; extraction means arranged to remove a majority of the fumigant from the fumigation

chamber; absorption means to absorb the fumigant extracted from the fumigation chamber; and *means for washing at least part of the absorption means to remove and degrade the absorbed fumigant.* The degrading means makes it possible to use a relatively small-scale, mobile absorption unit. If the collected fumigant on the absorption means was not degraded regularly, its absorption capacity would be quickly exhausted. Thus, the step of chemical degradation of fumigant in the present invention allows the use of *a compact absorption unit*, which is of a size that is very suitable for use with conventional shipping containers. Such an absorption unit can be portable like the shipping containers are. There is no need for large or complex machinery such as a steamer or a heating kiln to regenerate the absorbent material. Instead a chemical degradation reaction achieved by washing can be carried out simply and at room temperature by a single operator. This ensures that the absorption unit is simple to use and re-use.

The Smithyman patent does not disclose or suggest that the fumigation system is portable, or could be made portable. To the contrary, it teaches that the mixture of the gas, including the inert gas in one embodiment, is prepared at a fixed facility and then transported to the fumigation site for use. In another embodiment the gas mixing plant is set up on site as a phosphine generator. In other words the Smithyman invention is for the production of a fumigant gas mixture and does not include any teaching of fumigation of containers or any other enclosure.

Applicant respectfully submit that none of the cited prior art documents, alone or in combination, discloses or suggests a mobile fumigation means.

The Applicant asserts that the skilled person in the art of developing in-container fumigation apparatus would need some inventiveness to be able deduce the instant claimed invention from a combination of any of the cited prior art documents. Attached herewith is a Declaration under 37 CFR 1.132 of the inventor, Kenneth George Brash.

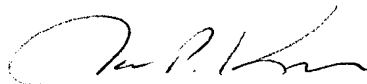
In view of the above, it is respectfully submitted that the application is now in condition for allowance which is earnestly solicited.

The Commissioner is hereby authorized to charge any additional fees which may be required in this application under 37 C.F.R. §§1.16-1.17 during its entire pendency, or credit any overpayment, to Deposit Account No. 06-1135. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, other-wise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1135.

Respectfully submitted,

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